

1 financial statement here, August 27, 1993. That was  
2 the first time she said she needed it, because when we  
3 first discussed it, she said that -- I may have asked  
4 her if I should send her a copy of it. Or I'm not  
5 sure exactly what I said, but I know I remember very  
6 clearly her saying, "I don't need it now but I will."

7 And I said, "Well, you let me know when you  
8 need it."

9 Q. So approximately during the time of that  
10 August 27 marked Exhibit No. 1 financial statement,  
11 that was when you provided the statements to her?

12 A. Yes.

13 Q. Exhibit No. 1 and Exhibit No. 2?

14 A. That's correct.

15 Q. Fine. Did she ask you for anything else in  
16 writing prior to December, 1991? Let's strike that  
17 question.

18 Did she ask you for anything in writing prior  
19 to December, 1991?

20 A. She didn't ask me for anything in writing in  
21 December, 1991, and she didn't ask me for anything in  
22 writing prior to that time.

23 Q. Did she ask you for anything else in writing  
24 after December, 1991?

25 A. Again, you keep saying "else." She never

1 asked me for anything in writing. The only reason I'm  
2 saying that is there seems to be some implication that  
3 she did ask me for something in writing. The first  
4 time she ever asked for a writing was, in the form of  
5 a financial statement, was around August, 1993,  
6 although I had told her in 1991 that I would give her  
7 what she needed.

8 And now, as we're sitting here, I do recall  
9 specifically asking her in the conversation we talked  
10 about my balance sheet whether she needed a commitment  
11 letter, and she told me that she did not.

12 Q. What do you mean by "a commitment letter"?

13 A. I'm using the term that bankers use. It's a  
14 formal written commitment by a bank to lend funds, and  
15 it's frequently used in deals and transactions where  
16 you get a commitment letter from the bank, and based  
17 on that commitment letter, you go out and do a deal.

18 And I asked her whether a commitment letter  
19 was necessary, and this was in 1991, and she said it  
20 was not. It was in the same conversation where she  
21 told me that she didn't need my financial statement.

22 Q. I understand. Let's take a short break. Is  
23 that okay?

24 A. Yes, absolutely.

25 (Recess from 11:35 to 11:45 a.m.)

1 Q. Before December, 1991, do you remember which  
2 conversation you did this in and what it is that you  
3 said?

4 A. We just went over that. I'll recapitulate it  
5 for you. At some point in 1991, in November, 1991,  
6 and I date it all by the receipt of this check from my  
7 former law firm, which has nothing to do with this  
8 specifically except that I remember very clearly  
9 waiting for it, having received it, and then Loren and  
10 I going over my balance sheet, and that's how I'm able  
11 to date the conversations. Those were about the third  
12 week in November.

13 Before that there was -- and it may have been  
14 a week or two before that -- she told me that she was  
15 getting concerned that Derrick Cephas and his group  
16 would not give her the commitment that she needed to  
17 file her application. It was at that point that I  
18 volunteered, and I said that, "Hey, I'll be glad to do  
19 it. I think it's a great deal."

20 And following that, we had another  
21 conversation -- it was very shortly thereafter --  
22 where she became back and basically asked me to  
23 confirm what I had previously said. She said, "Are  
24 you really sure you want to do this?"

25 And I said, "Absolutely." I said, "This is a

1 very good deal." And I again reviewed what I saw as  
2 the economics of the transaction -- that you had an  
3 opportunity to get in on the ground floor and that  
4 your basic security was knowing that the market was  
5 pricing these stations substantially higher than their  
6 cost, and it made sense. And I confirmed that.

7 Q. And during those two conversations you've  
8 just spoken of, did you discuss any of the terms?

9 A. No, we never -- we never discussed the  
10 terms. I told her that I would provide the financing.

11 Q. How much was requested?

12 A. Well, at that point she had said \$350,000,  
13 \$360,000, one of those two. My recollection is  
14 \$350,000. She asked me at some point to sign a  
15 declaration in which she said it was 360,000, but it  
16 was in that range, but I'm not sure. That was the  
17 number we were talking about. But she had previously  
18 told me what the cost was to do this, but at this  
19 point we had not talked about the financing from me.  
20 She was talking about getting financing from Derrick  
21 Cephas and his group.

22 And as I said, it's possible, although I'm  
23 not sure, because this would have been in October,  
24 1991. I know I was in New York several times because  
25 we had just gotten a major decision in litigation, and

1       A.    It was in June or July, but I don't consider  
2   that a new commitment. I think it's as if somebody  
3   goes to a bank for a loan. They say they want  
4   \$100,000, but they wind up taking \$50,000. I think  
5   that's the situation here.

6       Q.    Does this --

7       A.    I think I should also add, and it's relevant  
8   here, is it was never -- in terms of the exact  
9   contours of the loan, the \$350,000 that she said she  
10  needed and I said I would finance -- was described as  
11  the maximum that was necessary and that it would not  
12  be a sum that would be required all at once. It would  
13  be a sum that would be required after she got the  
14  application -- when and if the application was  
15  approved. I think she said going over a one- to  
16  two-year period between that point and the time the  
17  station finally went on the air that, you know, you  
18  would need -- certain expenses would come up sooner  
19  than others.

20       Q.    By "that point," do you mean to say when she  
21  was granted the construction permit?

22       A.    Whenever -- well, my agreement was to lend  
23  her up to \$350,000. Maybe it was \$360,000 -- my  
24  recollection is \$350,000 -- and that the money would  
25  be disbursed under that loan beginning at the point

1 when and if she won the -- she was granted the license  
2 by the FCC, and that's when the disbursements would  
3 begin, and they would continue up until the point when  
4 the station was finally on the air, which could have  
5 been, you know -- I think she was estimating one to  
6 two years. I don't recall exactly but somewhere in  
7 that time frame.

8 Q. So are we talking about one to two years of  
9 construction of the station?

10 A. I don't know. It wouldn't necessarily be  
11 construction of the station but the things that it  
12 takes to get a station on the air from the point that  
13 you have the license that, you know -- first of all,  
14 you have to get a tower, I guess. You have to get a  
15 transmitter; you have to get facilities; you have to  
16 purchase equipment; you have to hire a staff.

17 And I know that she had that -- a number of  
18 people were advising her on this, and I think they  
19 had, you know -- estimates of going from the earliest  
20 may have been nine months to twelve months, and some  
21 of them might have been two years.

22 Q. Did it include any time period after the  
23 station went on the air?

24 A. As I say, I am not sure. And I'll be very  
25 honest with you, I don't remember whether one of the

1 components in the \$350,000 was for working capital. I  
2 do know that one thing that stands out is the \$350,000  
3 was probably too high. It probably would not be that  
4 high.

5 Q. Let me move on to -- so with regard to the  
6 \$40,000 amount we spoke of earlier, was there any  
7 writing with regard to that commitment?

8 A. No. As I've told you, there was none.

9 Q. Was there any writing with regard to terms or  
10 conditions of that commitment?

11 A. No.

12 Q. Have you spoken to anyone else about the  
13 first commitment of the approximately \$350,000 to  
14 Ms. Selznick?

15 A. Yes. I spoke to my brother-in-law Terry  
16 Mc Nulty about it because he's the fellow in the radio  
17 business, and I suggested to him that he may want to  
18 bring my dear sister out to California and join the  
19 rest of us out here.

20 Q. Did you tell Ms. Selznick about this?

21 A. Yes.

22 Q. And what was her response?

23 A. I think she was enthusiastic because she  
24 knows Terry. She has met him on several occasions,  
25 and I think she would value very highly his experience

1 in the radio business. I mean, he's done it all.

2 Q. So was it with regard to him coming out and  
3 being employed by her?

4 A. Employed, that's right. But I think we were  
5 also, as I told her, you know, when she got around to  
6 hiring people, that she would want to get somebody who  
7 is good and senior and has a lot of experience and  
8 that she should be prepared to give them some equity,  
9 but it would be as an employee but with some form of  
10 equity typical to an employment agreement for a senior  
11 person.

12 Q. Would you be interested in -- strike that.  
13 Are you considering working for the radio  
14 station?

15 A. Good grief, no. I don't work as an employee  
16 anywhere, and besides, I don't think my voice would be  
17 very good over the air.

18 Q. Would you take on the role as an advisor to  
19 her with regard to her investment?

20 A. Oh, absolutely. And depending on how she  
21 organized her business. If it should be in a  
22 corporate form, I would probably want to be on the  
23 board of directors if I provided the financing.

24 MR. DANIELS: I would like to mark as Exhibit 3 a  
25 copy of a declaration, a two-page declaration with two



1 pages of attached financial statements, which appear  
2 to be identical to Exhibit 1 and 2 financial  
3 statements; so this shall be marked Exhibit 3, page 2  
4 bearing a signature of Joseph P. Dailey.

5 (The document referred to was marked  
6 Exhibit 3 for identification by the reporter  
7 and attached hereto.)

8 BY MR. DANIELS:

9 Q. I'm showing you page 2 of the declaration.  
10 Is that your declaration, and is that your signature?

11 A. This appears to be a copy of the declaration  
12 with my signature on it.

13 Q. Okay. What input did you have into drafting  
14 that declaration?

15 A. Virtually none. I was very busy at the  
16 time. She called and said that she needed a  
17 declaration. And I said, "Draft it up, and I'll read  
18 it and sign it." And she did and --

19 Q. By "she," you mean Ms. Selznick?

20 A. Loren Selznick, yes.

21 Q. Okay. Let's look at -- if it's okay, let me  
22 take one look at it again, please. I'm referring to  
23 paragraph 2.

24 When in December, 1991, did Ms. Selznick  
25 apply for the permit? You say, "At the time

1 confirming in writing that I had given -- that I had  
2 promised to give her the funds or agreed to give her  
3 the funds. And I forget what I was working on. This  
4 was August, 1993 --

5 Q. So at the --

6 A. -- but she drafted this, and I'll tell you I  
7 gave it a very cursory review. I didn't see anything  
8 wrong in it. It appeared to be accurate. I would  
9 have said some things differently, but substantively,  
10 it was accurate. And I signed it. And any lawyer  
11 knows that's how the legal world works. I don't talk  
12 this way.

13 Q. In paragraph 2 it says -- well, strike that.  
14 You did sign it. Did you understand what you  
15 were signing?

16 A. Absolutely.

17 Q. Fine. In paragraph 2 why is the period of  
18 three months without revenue mentioned as opposed to  
19 some other period?

20 A. Well, looking at this now, as you recall,  
21 earlier I said I was not -- I could not remember  
22 whether there was a working capital component to the  
23 \$350,000 number. She has the exact number down here,  
24 \$360,070, and I'm sure that was the number that we  
25 spoke of. I had remembered it as 350,000, but it's

1 application regarding an FCC license?

2 A. No. I was not aware that I had to. Did I?

3 Q. I don't know.

4 A. All I thought I was going to do was provide  
5 money. I thought that was enough. Maybe I failed the  
6 test.

7 Q. No. Let me ask you the next question. In  
8 sentence No. 2 of paragraph 2: "At the time, we  
9 contemplated that the total cost would be \$360,070."  
10 Why do you say "we contemplated"?

11 A. I understand I signed the declaration, but I  
12 also told you Loren drafted this, and when she drafted  
13 this and sent it to me, I believed this was  
14 substantively true. As I say, my recollection was --  
15 you had asked me -- without more, my thought was -- my  
16 recollection was \$350,000. She said it was \$360,000.  
17 And I said, "Well, your memory, I'm sure, is better  
18 than mine." And I assumed that she put down this  
19 \$360,070 figure from some piece of paper she had. I  
20 don't know why she did it.

21 But I certainly at the time did not say, "You  
22 can count on it. I'm going to provide you \$360,000,  
23 \$360,070." I told her that I would provide the  
24 financing. And she had previously told me that it  
25 was, again, my recollection is about \$350,000.

1 Q. Were there any other terms mentioned at that  
2 time?

3 A. At or about this time, she did raise -- she  
4 said that the other side, referring to Clanton's  
5 lawyers, had raised the question of whether or not it  
6 was a legally enforceable promise because there were  
7 no specific terms and conditions.

8 And I said, "As far as I'm concerned, that's  
9 a lot of baloney. Implicit in this is that they  
10 are reasonably commercial terms for a loan of this  
11 nature of exactly the type that I, when I had gone out  
12 to get financing -- you go to the banks, they are all  
13 the same for the financing of a business." And I  
14 said, "Those are the implicit terms. And you're  
15 roughly talking about 4 to 5 percent above prime.  
16 You're talking about a security interest in the hard  
17 assets. You're probably talking about some form of  
18 five-year note and probably a personal guarantee."

19 And whatever the terms are -- I mean, I was,  
20 you know -- this in one sense was a favor, but  
21 obviously for my wife and my family, you know, it  
22 would be a standard loan. I mean, that was always the  
23 position. Whatever she could get from the bank, if a  
24 bank was willing, those were the terms.

25 Q. When did you communicate these terms to

1 Ms. Selznick?

2 A. It was around -- it was at the time -- I  
3 believe it was after time I told her -- that she  
4 advised me that there would be -- that she was going  
5 to submit a revised proposal and that now what she  
6 would like me to finance was \$40,000. It was after  
7 that because I think it was when the litigation  
8 started or the FCC litigation if that qualifies as  
9 litigation. It's when that arose that we talked about  
10 this concept of terms. But we did not talk about the  
11 terms in connection with my commitment to provide the  
12 financing.

13 Q. The \$40,000?

14 A. The \$40,000 or the \$350,000 or \$360,000.

15 Q. Did she ask you at any time to put those  
16 terms in writing?

17 A. No. Well, that's not quite true. I told you  
18 that back in November, 1991, I asked her whether a  
19 commitment letter was required, and she told me it was  
20 not. Now, a commitment letter would have -- again, a  
21 typical commitment letter will not have very many  
22 terms in it. In fact, many -- I know bank lawyers who  
23 I talked to, said they don't like to put too many  
24 terms in them because they don't want it to rise to  
25 the level of an agreement, but it will generally

1 your financial status since the August 27, 1993  
2 financial statement?

3 A. No.

4 Q. Do you have a more recent financial  
5 statement?

6 A. As I say, I can produce a financial statement  
7 that, if you would like, would be right up to this  
8 minute. As I say -- I don't mean to be facetious -- I  
9 keep this on my computer, and obviously my bank  
10 accounts have different amounts of cash in them, and I  
11 know I put more money in the business. I got a small  
12 amount from the partnership profits, but I paid down  
13 some more mortgage debt. I paid down a note. So it's  
14 materially the same, but the individual numbers  
15 change. They change all the time.

16 Q. Just a few more questions. Did you give  
17 Ms. Selznick at any time any information or writing of  
18 your net income after federal income tax?

19 A. Did you say did I give her any information or  
20 any writing? I didn't give her any writing.

21 Q. Information about your net income after  
22 federal income tax.

23 A. Yes. We discussed that. It must have been  
24 around July, July of 1993, when the question arose  
25 whether I was financially capable or whatever the term

1 the SEC uses. And, in fact, I think maybe it came up  
2 when I was reviewing the FCC instructions, but  
3 someplace I said, "You know, you never talked to me  
4 about an income statement."

5 And she said that was right. And we joked  
6 something to the effect that it was unnecessary  
7 because she knew Breed, Abbott partners are paid  
8 outrageously anyway. And I subsequently told her, I  
9 think by 1991, I told her what my income was. It's  
10 fallen off since I left the law firm.

11 Q. Since you left the law firm?

12 A. Yes. But it's still reasonably comfortable.

13 Q. Well, being reasonably comfortable, thank you  
14 very much.

15 Let me, just for the record, say that I will  
16 stipulate that the court reporter be relieved of her  
17 duties under the Code; that the original deposition be  
18 sent to counsel; that the deponent be allowed to sign  
19 under penalty of perjury; and that you'll notify us,  
20 Mr. Dailey, of any changes a month from now, 30 days  
21 after receipt, 30 days from today's date, if that's  
22 okay?

23 A. Depends on when I get it.

24 Q. The 10th of January.

25 And that notification should be in writing.

CITED PAGES OF SELZNICK'S DEPOSITION



1 BY MR. MILLER:

2 Q. Were you aware that the commission  
3 requires the filing of an application for a license  
4 after completion of construction?

5 A. I believe so.

6 Q. Were you aware prior to filing your  
7 application that the completion of Form 302 requires  
8 certain engineering information to be supplied?

9 A. No.

10 Q. Were you aware that the filing of the Form  
11 302 necessitated the paying of a fee to the FCC?

12 A. Only to the extent that my understanding  
13 is every time you file some sort of application with  
14 the FCC, there is a fee connected with it.

15 Q. You were not aware of the amount of the  
16 fee, though?

17 A. No.

18 Q. And it does not appear in your budget  
19 anywhere, does it?

20 A. No.

21 Q. You are proposing, according to page 72,  
22 to have an STL?

1           A.     Yes.

2           Q.     Do you see that?

3                   MR. THOMPSON:  You are asking that in  
4     the present tense?

5                   MR. MILLER:  The budget proposes an  
6     STL.

7                   MR. THOMPSON:  I just want to be sure  
8     that you are talking about what this budget proposes  
9     as opposed to what her plan may be today?

10                  MR. MILLER:  We are talking about at  
11     the time she filed her application.

12     BY MR. MILLER:

13           Q.     When you filed your application, were you  
14     aware whether a separate application for an STL was  
15     required by the FCC?

16           A.     No.

17           Q.     So you would not have been aware whether  
18     any fees had to be paid to the FCC in connection  
19     with such an application?

20           A.     I didn't know that there was such an  
21     application required.

22           Q.     And there is no provision in your budget

1     furnishings?

2             A.     Yes.

3             Q.     Did you so intend at the time you filed  
4     your application?

5             A.     Yes, I did.

6             Q.     Did you estimate the cost of moving those  
7     household furnishings to California?

8                     MR. THOMPSON: I am going to object  
9     as irrelevant. I'll probably let the witness  
10    answer, but, again, Jerry, think this through a  
11    minute.

12                    MR. MILLER: If you are going to  
13    allow her to answer, then let her answer. I want to  
14    get a move on. It's a quarter to six.

15                    MR. THOMPSON: Go ahead.

16                    THE WITNESS: The question is, did I  
17    estimate --

18    BY MR. MILLER:

19             Q.     Did you estimate the cost of moving your  
20    household furnishings from New York to California?

21                    MR. THOMPSON: As part of this cost  
22    budget?

1 BY MR. MILLER:

2 Q. As part of your estimate of the cost to  
3 construct the station?

4 A. No.

5 Q. At the time you created this budget, did  
6 you intend to personally supervise the construction  
7 of the station?

8 MR. THOMPSON: Let me ask, by  
9 "personally supervise the construction of the  
10 station," be onsite?

11 MR. MILLER: Being onsite. Be  
12 onsite.

13 THE WITNESS: Do you mean constantly?

14 BY MR. MILLER:

15 Q. On a daily basis.

16 A. On a daily basis?

17 MR. THOMPSON: Forty hours a week.

18 THE WITNESS: No.

19 BY MR. MILLER:

20 Q. Did you intend to spend some time onsite  
21 during the construction of the station?

22 A. Yes.

1 same trip where I drove around California with my  
2 girlfriend. We stayed at his home twice then and  
3 then I stayed there again, I think, twice at the end  
4 of the summer around the NAB convention.

5 And then I found out about the El Rio  
6 frequency, and he basically encouraged me to pursue  
7 it. It sounded like a good deal to him, and he is  
8 someone who I rely on and trust for advice in  
9 addition to being someone who I trust as a friend  
10 and as a former member of Breed, Abbott.

11 And at some point when it was getting close to  
12 when the application was going to be filed and  
13 things were not panning out with Mr. Cephas, Joe  
14 said that he would lend me the money and we  
15 discussed his finances at that point.

16 Q. Did he provide you at that point with any  
17 documentation of his finances? "At that point"  
18 meaning prior to the application being filed.

19 A. He read from his balance sheet to me and  
20 he told that I could have it whenever I needed it.

21 Q. This reading was over the telephone?

22 A. That's right.

1           Q.    How long before the application was filed  
2 did you have this telephone call?

3           A.    I don't remember.

4           Q.    Was this the same call in which he said he  
5 would be willing to lend you the money?

6           A.    No.

7           Q.    Was the call where he said he would lend  
8 you the money before or after he read from his  
9 balance sheet?

10          A.    Before.

11          Q.    Tell me more about what he said, if  
12 anything, regarding his willingness to lend you the  
13 money? Was that the extent of it? He said, "I will  
14 lend you the money." Did he say anything else?

15          A.    Well, he also said that he could lend me  
16 the money, and I think he said, "It sounded like a  
17 good deal," and it was -- he said he would lend me  
18 the money as a backup if I didn't borrow it from  
19 somewhere else.

20          Q.    Did you make any notes of that  
21 conversation?

22          A.    No.

1           Q.     Any reason why you didn't? There are so  
2 many notes. We have spent three hours on notes.

3           A.     For a couple of reasons. One is that, as  
4 I say, I talk to Joe several times a day and we  
5 cover a myriad of topics in the same conversation,  
6 and in one conversation, it could be half personal  
7 and half business. We could be talking about his  
8 children or my parrot. I don't take notes of our  
9 conversations unless it's clearly instructions I  
10 have to follow.

11           As I say, I still work for him and he will  
12 often call me with marching orders and then I start  
13 taking notes, but, no, I mean, this is a good  
14 friend, this is a person I trust, and you take notes  
15 of a conversation if you are afraid that you won't  
16 be able to carry through what you are supposed to do  
17 afterwards in the sense that you are not going to  
18 remember what your instructions are or if it's  
19 somebody you don't know and you want to be able say  
20 later, "Hey, wait a second. On such and such a date  
21 you told me X." I don't habitually take notes of my  
22 telephone conversations with friends.

1 A. Specifically Oxnard, no.

2 Q. The Oxnard/El Rio?

3 A. Specifically that area, no.

4 Q. When Mr. Dailey was giving you information  
5 from his balance sheet over the telephone, did he  
6 give you his net income after federal income tax for  
7 either 1990 or 1989?

8 A. No, but I have a general idea of what it  
9 was.

10 Q. How did you have this general idea?

11 A. Because I had a general idea what partners  
12 made at Breed, Abbott.

13 Q. I am sorry. When, again, did he leave  
14 Breed, Abbott?

15 A. Sometime between January and April of  
16 '91.

17 Q. Now you indicated that, I think you used  
18 the term, you had reasonable assurance of  
19 financing. At the time you filed your application,  
20 what was your understanding of the term, reasonable  
21 assurance of financing, as it appears on FCC Form  
22 301? Let me make sure it appears there.



1           (Counsel perusing document.) No, they took  
2 that out. They took it out from the form. Let's  
3 not refer to the form. Let me strike that question  
4 and ask another question.

5           Did you understand at the time that you filed  
6 your application in 1991 that you had to have  
7 reasonable assurance of the funds necessary to meet  
8 your construction and initial operating costs?

9           MR. THOMPSON: Objection. Asked and  
10 answered. She already said she did. She testified  
11 earlier that she told Mr. Dailey that was one of the  
12 things she had to have.

13 BY MR. MILLER:

14           Q. Give me what your understanding of the  
15 commission's definition of reasonable assurance was  
16 at the time you filed your application?

17           A. I am not sure I was aware of that term at  
18 that time.

19           Q. Did you do any research into the  
20 commission's decisions or policy statements  
21 regarding financial qualification prior to filing  
22 your application?